

TITLE 44

Taxation

CHAPTER 44-27

Taxation of Farm, Forest, and Open Space Land

§ 44-27-1 Legislative declaration. – It is declared:

(1) That it is in the public interest to encourage the preservation of farm, forest, and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state's natural resources, and to provide for the welfare and happiness of the inhabitants of the state.

(2) That it is in the public interest to prevent the forced conversion of farm, forest, and open space land to more intensive uses as the result of economic pressures caused by the assessment for purposes of property taxation at values incompatible with their preservation as farm, forest, and open space land.

(3) That the necessity in the public interest of the enactment of the provisions of this chapter is a matter of legislative determination.

§ 44-27-2 Definitions. – When used in this chapter:

(1) "Farmland" means:

(i) Any tract or tracts of land, including woodland and wasteland constituting a farm unit;

(ii) Land which is actively devoted to agricultural or horticultural use including, but not limited to: forages and sod crops; grains and feed crops; fruits and vegetables; poultry, dairy, and other livestock and their products; nursery, floral, and greenhouse products; other food or fiber products useful to people;

(iii) When meeting the requirements and qualifications for payments pursuant to a soil conservation program under an agreement with the federal government, the director of environmental management is authorized to promulgate and adopt rules and regulations defining particular categories and minimum acreages of land eligible for designation as farmland under this chapter.

(2) "Forest land" means any tract or contiguous tracts of land, ten (10) acres or larger bearing a dense growth of trees, including any underbrush, and having either the quality of self perpetuation, or being dependent upon its development by the planting and replanting of trees in stands of closely growing timber, actively managed under a forest management plan approved by the director of environmental management.

(3) "Open space land" means any tract or contiguous tracts of undeveloped land, where the undeveloped land serves to enhance agricultural values, or land in its natural state that conserves forests, enhances wildlife habitat or protects ecosystem health, and that is:

(i) Ten (10) total acres or larger, exclusive of house site, where "house site" means the zoned lot size or one acre, whichever is smaller, and land surrounding dwellings or devoted to developed facilities, such as tennis courts, pool, etc., related to the use of the residence; or

(ii) Tracts of land of any size that are designated as open space land in the comprehensive community plan; or

(iii) Tracts of land of any size that have conservation restrictions or easements in full force and applied for as open space, which shall be taxed on an equitable basis.

§ 44-27-3 Classification of farmland. – (a) An owner of land may file a written application with the director of environmental management, for its designation by the director as farmland. When the application is made and after a filing fee of ten dollars (\$10.00) is paid, the director shall examine the land and, if the director determines that it is farmland, the director shall issue a certificate in his or her office, furnish a copy to the owner of the land, and file one copy in the office of the assessor of the city or town in which the land is located.

(b) When requested to do so by the assessor or whenever the director deems it necessary, the director of environmental management shall re-examine land designated by the director as farmland. If the director finds that this land is no longer farmland, the director shall send a notice to the landowner that the landowner has thirty (30) days either to bring the land into compliance or to request a formal hearing before the director. If after the thirty (30) days or after the hearing, the director confirms that the land is no longer farmland, the director shall issue a certificate canceling his or her designation of the land as farmland, and shall furnish one copy to the owner and file one in the office of the assessor. Loss of designation by action of the director of environmental management makes the land subject to the land use change tax provided for in § 44-5-39.

(c) An owner of land designated as farmland by the director of environmental management may apply for its classification as farmland on any assessment list of the city or town where it is located by filing a written application for that classification with the assessor of the city or town not earlier than thirty (30) days before nor later than thirty (30) days after the date of assessment, except that in years of revaluation not later than thirty (30) days after written notice of revaluation or in its absence after receipt of the tax bill, and if the director has not cancelled his or her designation of that land as farmland as of a date at or prior to the date of the assessment, the assessor shall classify the land as farmland and include it as farmland on the assessment list.

(2) In order to maintain this classification, each year thereafter, the property owner shall submit to the assessor a certificate on a form prescribed by the assessor confirming that the land is still used in farming. The assessor shall mail the forms by registered or certified mail not later than the thirtieth of November. Failure to submit the certificate by thirty (30) days after the date of assessment is construed as voluntary withdrawal of the classification, except that the assessor may waive this requirement for good cause.

(3) Notwithstanding the preceding subsections, whenever the owner of land designated and classified as farmland is a municipal land trust, municipal conservation commission, or private nonprofit land trust, annual certification is not required, and the classification continues until the voluntary withdrawal of the classification by the owner, or the transfer of the land by the owner in fee simple.

(d) Application to the director of environmental management for designation as farmland shall be made upon a form prescribed by the director and shall present a description of the land and any other information that he or she may require to aid the director in determining whether the land qualifies for that designation. An application to an assessor for classification of land as farmland shall be made upon a form prescribed by the assessor and shall present a description of the land and the date of issuance by the director of environmental management of his or her certificate designating it as farmland.

(e) Failure to file an application for classification of farmland within the time limit prescribed in subsection (c) of this section and in the manner and form prescribed in subsection (d) of this section shall be construed as a waiver of the right to that classification on the assessment list.

(f) Any landowner aggrieved by: (1) the cancellation of a designation under subsection (b) of this section or the denial of an application, filed in accordance with the provisions of subsections (c) and (d) of this section, by the assessor of a city or town for a classification of land as farmland; or (2) the use value assessment placed on land classified as farmland by the assessor; has the right to file an appeal within ninety (90) days of receiving notice, in writing, of the denial or the use value assessment with the board of assessment review of the city or town. Should the city or town not have a board of assessment review, the city or town council reviews the appeal. The assessor shall be given the opportunity to explain either his or her refusal to classify the land or the assessment placed on the classified land. The board of review, or city or town council, shall also consider the testimony of the landowner and the city or town's planning board and conservation commission, if they exist. They shall also seek and consider the advice of the office of state planning, the department of environmental management, the dean of the college of resource development, and the conservation district in which the city or town is located.

(g) The board of assessment review, or city or town council, shall not disturb the designation of the director issued pursuant to subsection (a) of this section, unless the tax assessor has shown by a preponderance of the evidence that that designation was erroneous.

(2) The board of assessment review, or city or town council, shall render a decision within forty-five (45) days of the date of filing the appeal. Decisions of the board of assessment review, or city or town council, may be appealed to the superior court pursuant to § 44-27-6.

§ 44-27-4 Classification of forest land. – (a) An owner of not less than ten (10) acres of forest land may file a written application with the director of environmental management for its designation by the director as forest land. When the application is made and a filing fee of ten dollars (\$10.00) is paid, the director shall examine the land and, if the director determines that it is forest land, the director shall issue a certificate in his or her office, furnish a copy to the owner of the land, and file a copy in the office of the assessor of the city or town where the land is located.

(b) When requested to do so by the assessor or whenever the director deems it necessary, the director of environmental management shall re-examine land designated by him or her as forest land. If the director finds that the land is no longer forest land or if the director finds that the land is not being managed in accordance with the forest management plan approved by the director, he or she shall send a notice to the landowner that the landowner has thirty (30) days either to bring the land into compliance or to request a formal hearing before the director. If after the thirty (30) days or after the hearing, the director confirms that the land is no longer forest land, the director shall issue a certificate canceling his or her designation of the land as forest land and shall furnish one copy to the owner and shall file one copy in the office of the assessor.

(2) Loss of designation by action of the director of environmental management makes the land subject to the land use change tax provided for in § 44-5-39.

(c) An owner of land designated as forest land by the director of environmental management may apply for its classification as forest land on any assessment list of the city or town where it is located by filing a written application for the classification with the assessor of the city or town not earlier than thirty (30) days before nor later than thirty (30) days after the date of assessment, except that in years of revaluation not later than thirty (30) days after written notice of revaluation or in its absence after receipt of the tax bill. If the director has not cancelled his or her designation of the land as

forest land as of a date at or prior to the date of the assessment, the assessor shall classify the land as forest land and include the land as forest land on the assessment list.

(2) In order to maintain this classification, each year thereafter, the property owner shall submit to the assessor a certificate on a form prescribed by the assessor confirming that the land is still managed as forest land. The assessor shall mail these forms to the property owner not later than November thirtieth. Failure to submit the certificate by thirty (30) days after the date of assessment is construed as voluntary withdrawal of the classification; except that the assessor may waive this requirement for good cause.

(3) Notwithstanding the preceding subsections, whenever the owner of land designated and classified as forest land is a municipal land trust, municipal conservation commission, or private non-profit land trust, annual certification is not required, and the classification continues until the voluntary withdrawal of the classification by the owner or transfer of the land by the owner in fee simple.

(d) Application to the director of environmental management for designation of land as forest land shall be made upon a form prescribed by the director and shall present a description of the land and any other information that he or she may require to aid the director in determining whether the land qualifies for that designation, including a written forest management plan prepared by a professionally qualified forester on the director's staff or another professionally qualified forester in consultation with the landowner, with recommended management practices to be followed. An application to an assessor for classification of land as forest land shall be made on a form prescribed by the assessor and shall present a description of the land and the date of the issuance by the director of his or her certificate designating it as forest land.

(e) Failure to file an application for classification of land as forest land within the time limit prescribed in subsection (c) of this section and in the manner and form prescribed in subsection (d) of this section is considered a waiver of the right to that classification on the assessment lists.

(f) Any landowner aggrieved by: (1) the cancellation of a designation under subsection (b) of this section or the denial of an application, filed in accordance with the provisions of subsections (c) and (d) of this section, by the assessor of a city or town for a classification of land as forest land; or (2) the use value assessment placed on land classified as forest land by the assessor; has the right to file an appeal within ninety (90) days of receiving notice, in writing, of the denial or the use value assessment with the board of assessment review of the city or town. Should the city or town not have a board of assessment review, the city or town council shall review the appeal. The assessor is given the opportunity to explain either his or her refusal to classify the land or the assessment placed on the classified land. The board of review, or city or town council, shall also consider the testimony of the landowner and the city or town's planning board and conservation commission, if they exist. They shall also seek and consider the advice of the office of state planning, the department of environmental management, the dean of the college of resource development and the conservation district in which the city or town is located.

(g) The board of assessment review, or city or town council, shall not disturb the designation of the director issued pursuant to subsection (a) of this section, unless the tax assessor has shown by a preponderance of the evidence that that designation was erroneous.

(2) The board of assessment review, or city or town council, shall render a decision within forty-five (45) days of the date of filing the appeal. Decisions of the board of assessment review, or city or town council, may be appealed to the superior court pursuant to the provisions of § 44-27-6.

§ 44-27-5 Classification of open space land. – (a) An owner of land may apply for its classification as open space land on any assessment list of a city or town by filing a written application for that classification with the assessor of the city or town, not later than thirty (30) days before nor later than thirty (30) days after the date of assessment, except in years of revaluation when the landowner may file not later than thirty (30) days after receiving written notice of revaluation or in its absence after receipt of the tax bill. The assessor shall determine whether the land is open space and, if the assessor determines that the land is open space, the assessor shall classify the land as open space land and include the land as open space on the assessment list.

(2) In order to maintain this classification, each year thereafter, the landowner shall submit to the assessor a certificate, on a form prescribed by the assessor, confirming that the land is still open space. The assessor shall mail these forms by registered or certified mail not later than the thirtieth of November. Failure to submit the certificate by thirty (30) days after the date of assessment is construed as voluntary withdrawal of the classification; except that the assessor may waive this requirement for good cause.

(3) Notwithstanding the preceding subdivision, whenever the owner of land designated and classified as open space land is a municipal land trust, municipal conservation commission, or private nonprofit land trust, annual certification is not required, and the classification continues until the voluntary withdrawal of the classification by the owner, or the transfer of the land by the owner is fee simple.

(b) An application for classification of land as open space land shall be made upon a form prescribed by the assessor and shall present a description of the land, a general description of the use to which it is being put, and any other information that the assessor may require to aid him or her in determining whether the land qualifies for that classification.

(c) Failure to file an application for classification of land as open space land within the time limit prescribed in subsection (a) of this section and in the manner and form prescribed in subsection (b) of this section is considered a waiver of the right to that classification on the assessment list.

(d) Any landowner aggrieved by: (1) the denial of an application filed in accordance with the provisions of subsections (a) and (b) of this section by the assessor of a city or town for classification of land as open space land; or (2) the use value assessment placed on land classified as open space land by the assessor; has the right to file an appeal within ninety (90) days of receiving notice, in writing, of the denial or the use value assessment with the board of assessment of review of the city or town. Should the city or town not have a board of assessment review, the city or town council shall review the appeal. The assessor shall be given the opportunity to explain either his or her refusal to classify the land or the assessment placed on the classified land. The board of review or city or town council shall also consider the testimony of the landowner and the city or town's planning board and conservation commission, if they exist. They shall also seek and consider the advice of the office of state planning, the department of environmental management, the dean of the college of resource development and the conservation district in which the city or town is located.

(e) The board of assessment review, or city or town council, shall not disturb the designation of the director issued pursuant to subsection (a) of this section, unless the tax assessor has shown by a preponderance of the evidence that that designation was erroneous.

(2) The board of assessment review or city or town council shall render a decision within forty-five (45) days of the date of filing the appeal. Decisions of the board of assessment review, or city or town council, may be appealed to the superior court pursuant to the provisions of § 44-27-6.

§ 44-27-6 Appeals to superior court. – (a) Any person or persons jointly or severally aggrieved by a decision of the board of assessment review, or city or town council, may appeal to the superior court for the county in which the municipality is situated by filing a complaint stating the reasons of appeal within ninety (90) days after the decision has been filed in the office of the board of assessment review, or city or town council. The board of assessment review, or city or town council, shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies of the original documents, together with any other facts that may be pertinent with the clerk of the court within ten (10) days after being served with a copy of the complaint. When the complaint is filed by someone other than the original applicant or appellant, the original applicant or appellant and the members of the board of review, or city or town council, are made parties to the proceedings. The appeal shall not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make other orders that it deems necessary for an equitable disposition of the appeal.

(b) If, before the date set for the hearing in the superior court, application is made to the court for leave to present additional evidence before the board of assessment review, or city or town council, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for the failure to present it at the hearing before the board of review, or city or town council, the court may order that the additional evidence be taken before the board of review, or city or town council, upon conditions determined by the court. The board of review, or city or town council, may modify its findings and decision by reason of that additional evidence and file that evidence and any modification, new findings, or decisions with the superior court.

(c) The review shall be conducted by the superior court without a jury. The court shall consider the record of the hearing before the board of assessment review, or city or town council, and if it appears to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present that evidence in open court, which evidence along with the record constitutes the record upon which the determination of the court is made. The court shall not substitute its judgment for that of the board of assessment review, or city or town council, as to the weight of the evidence on question of fact. The court may affirm the decision of the board of assessment review, or city or town council, or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

- (1) In violation of constitutional, statutory, or ordinance provisions;
- (2) In excess of the authority granted to the board of assessment review, or city or town council, by statute or ordinance;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(d) If the taxpayer's tax is paid, whether before or after the filing of the petition, then the court shall upon a finding in favor of the petitioner, give judgment for the petitioner for the sum by which he or she has been overtaxed, or illegally taxed, plus the amount of any penalty paid, with interest at the

rate of twelve percent (12%) per annum from the date on which the tax and penalty were paid and costs. The judgment shall be paid to the petitioner by the city or town treasurer out of the treasury.

§ 44-27-7 Rules and regulations. – The director of environmental management is authorized to promulgate those rules and regulations that the director deems necessary to carry out his or her responsibilities and fulfill the purposes of this chapter.

§ 44-27-8 Availability of current values – Duties of the department of administration. – The department of administration shall annually publish all information, which it collects that relates to land values for different types of farm, forest, or open space lands. This information shall be made available to local assessors.

§ 44-27-9 Change of ownership – Procedure for continuance of classification – Effect on land use change tax. – (a) Upon the change of ownership of title, as recorded in the land evidence records of the city or town, of land previously classified as farm, forest, or open space land, the assessor of the city or town where the land is located shall notify the new owner that the land is classified as farm, forest, or open space and that land withdrawn from that classification is subject to the land use change tax provided for in § 44-5-39. The new owner may apply to the local assessor for continuance of classification and special assessment as provided in § 44-5-12. Upon certification by the new owner that the land continues its use as farmland, its management as forest land, or its preservation as open space land, the assessor shall continue it as that on the assessment list and notify the director of environmental management of the change in ownership.

(b) A change of ownership of land classified as farm, forest, or open space land, except for change in ownership through inheritance or interfamily transfer, where the new owner continues its classification as farm, forest, or open space land, commences anew the computation of the period the land has been so classified for the purposes of determining the land use change tax provided for in § 44-5-39.

(c) For the purposes of this section, transfer of ownership of land from an individual to a corporation wholly owned by that individual and/or his or her immediate family is not considered a change of ownership of the land. Where the owner of land classified under this chapter is a corporation, any change in ownership of ten percent (10%) or more of the outstanding common stock of the corporation is considered a change in ownership of the land, and shall be reported to the assessor of the town or city in which the land is located.

(d) New owners of land previously classified as farm, forest, or open space land who do not apply for continuance of classification as in subsection (a) of this section are considered to have voluntarily withdrawn the classification and become liable for the land use change tax in effect at the time of change of ownership. This tax is determined by the assessor within forty-five (45) days of the end of the recertification period provided for in subsection (a) of this section and falls due at the time the use of the land is changed. This tax constitutes a lien against the land and runs with the deed until the obligation is satisfied.

§ 44-27-10 Reclassification of land withdrawn from classification – Effect on obligations and the land use change tax. – Land, previously classified as farm, forest, or open space land, which was withdrawn from that classification may be reclassified as that classification if it still meets the requirements of this chapter. This reclassification of the land commences anew the computation of the period for purposes of the land use change tax. Any unpaid lien obligated by the previous withdrawal is voided. At no time shall an obligation incurred under the provisions of this chapter exceed ten percent (10%) of the then fair market value of the land.

§ 44-27-11 Powers of the board of assessment review or city or town council. – The board of assessment review, or city or town council, has the power to:

- (1) Retain by contract or employ counsel, appraisers, private consultants, and other personnel for other service if funds are available.
- (2) Conduct hearings, examinations, and investigations as may be necessary and appropriate for the conduct of its operations.
- (3) Obtain access to public records and apply for the process of subpoena, if necessary, to produce books, papers, records, and other data.
- (4) Require the tax assessor of a city or town to classify land as farmland, forest land, or open space land if in the board's judgment the land should be so classified.
- (5) Change the use value assessment placed on land classified as farmland, forest land, or open space land if in the board's judgment land so classified has been incorrectly or inequitably assessed.
- (6) Change the fair market value placed on land subject to the land use change tax in § 44-5-39 if, in the judgment of the board, the land has been appraised in excess of its fair market value at the time of the change of use or withdrawal of classification.
- (7) Otherwise do all things necessary for the performance of its duties.

§ 44-27-12 Duties of the board of assessment review or city or town council. – The board of assessment review, or city or town council, shall hear and render a judgment on all appeals of:

- (1) Landowners denied certification as farmland or forest land by the director of the department of environmental management or when the certification has been cancelled;
- (2) Tax assessors aggrieved by the certification of land as farmland or forest land by the director of the department of environmental management;
- (3) Landowners denied classification as farm, forest, and open space land by the local assessor;
- (4) Landowners aggrieved by the use value assessment set by the local assessor;
- (5) Landowners appealing the fair market value set by the local assessor for use in determining the land use change tax payable under the provisions of §§ 44-5-39 – 44-5-41.

§ 44-27-12 Duties of the board of assessment review or city or town council. – The board of assessment review, or city or town council, shall hear and render a judgment on all appeals of:

- (1) Landowners denied certification as farmland or forest land by the director of the department of environmental management or when the certification has been cancelled;
- (2) Tax assessors aggrieved by the certification of land as farmland or forest land by the director of the department of environmental management;
- (3) Landowners denied classification as farm, forest, and open space land by the local assessor;
- (4) Landowners aggrieved by the use value assessment set by the local assessor;
- (5) Landowners appealing the fair market value set by the local assessor for use in determining the land use change tax payable under the provisions of §§ 44-5-39 – 44-5-41.

§ 44-27-13 Severability. – If any clause, sentence, paragraph, or part of this chapter is for any reason judged invalid by any court of competent jurisdiction, the judgment does not affect, impair, or invalidate the remainder of this chapter but is confined in its operation to the clause, sentence, paragraph, or part of this chapter directly involved in the controversy in which the judgment has been rendered.

TITLE 44

Taxation

CHAPTER 44-5

Levy and Assessment of Local Taxes

§ 44-5-39 Land use change tax. – (a) After May 15, 1980, when land classified as farm, forest, or open space land and assessed and taxed under the provisions of § 44-5-12 is applied to a use other than as farm, forest, or open space, or when the land owner voluntarily withdraws that classification, it shall be subject to additional taxes, subsequently referred to as a land use change tax. The tax is at the following rate:

(1) Ten percent (10%) of the then fair market value of the land if the use is changed or classification is withdrawn during the first six (6) years of classification.

(2) Nine percent (9%) of the then fair market value of the land if the use is changed or classification is withdrawn during the seventh (7th) year of classification.

(3) Eight percent (8%) of the then fair market value of the land if the use is changed or classification is withdrawn during the eighth (8th) year of classification.

(4) Seven percent (7%) of the then fair market value of the land if the use is changed or classification is withdrawn during the ninth (9th) year of classification.

(5) Six percent (6%) of the then fair market value of the land if the use is changed or classification is withdrawn during the tenth (10th) year of classification.

(6) Five percent (5%) of the then fair market value of the land if the use is changed or classification is withdrawn during the eleventh (11th) year of classification.

(7) Four percent (4%) of the then fair market value of the land if the use is changed or classification is withdrawn during the twelfth (12th) year of classification.

(8) Three percent (3%) of the then fair market value of the land if the use is changed or classification is withdrawn during the thirteenth (13th) year of classification.

(9) Two percent (2%) of the then fair market value of the land if the use is changed or classification is withdrawn during the fourteenth (14th) year of classification.

(10) One percent (1%) of the then fair market value of the land if the use is changed or classification is withdrawn during the fifteenth (15th) year of classification. No tax shall be imposed by the provisions of this section following the end of the fifteenth (15th) year of classification.

(b) Owners of land classified as farmland who have held title to the land, and where the land has been farmed for five (5) years previous to classification, are liable for a land use change tax of:

- (1) Ten percent (10%) of the then fair market value of the land if the use is changed or classification is withdrawn during the first (1st) year of classification.
- (2) Nine percent (9%) of the then fair market value of the land if the use is changed or classification is withdrawn during the second (2nd) year of classification.
- (3) Eight percent (8%) of the then fair market value of the land if the use is changed or classification is withdrawn during the third (3rd) year of classification.
- (4) Seven percent (7%) of the then fair market value of the land if the use is changed or classification is withdrawn during the fourth (4th) year of classification.
- (5) Six percent (6%) of the then fair market value of the land if the use is changed or classification is withdrawn during the fifth (5th) year of classification.
- (6) Five percent (5%) of the then fair market value of the land if the use is changed or classification is withdrawn during the sixth (6th) year of classification.
- (7) Four percent (4%) of the then fair market value of the land if the use is changed or classification is withdrawn during the seventh (7th) year of classification.
- (8) Three percent (3%) of the then fair market value of the land if the use is changed or classification is withdrawn during the eighth (8th) year of classification.
- (9) Two percent (2%) of the then fair market value of the land if the use is changed or classification is withdrawn during the ninth (9th) year of classification.
- (10) One percent (1%) of the then fair market value of the land if the use is changed or classification is withdrawn during the tenth (10th) year of classification. No tax shall be imposed by the provisions of this section following the end of the tenth year of classification.